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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

| | | |
|---------------------------------------|---|---------------------|
| In the Matter of |) | |
| |) | |
| Amendment of Section 73.202(b) |) | MB Docket No. 05-17 |
| Table of Allotments |) | RM-11113 |
| FM Broadcast Stations |) | RM-11114 |
| Connersville, Madison, and Richmond, |) | |
| Indiana, Erlanger and Lebanon, |) | |
| Kentucky, and Norwood, Ohio; |) | |
| Lebanon, Lebanon Junction, |) | |
| New Haven, and Springfield, Kentucky) |) | |

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Federal Communications Commission
Office of Secretary

To: Office of the Secretary
Attn: Assistant Chief, Audio Division
Media Bureau

COMMENTS AND AMENDED PROPOSAL

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ELIZABETHTOWN CBC, INC.
CBC OF MARION COUNTY, INC.
WASHINGTON COUNTY CBC, INC.

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March 21, 2005

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SUMMARY

This Comment and Amended Proposal is filed on behalf of Elizabethtown CBC, Inc., CBC of Marion County, Inc., Washington County CBC, Inc., Newberry Broadcasting, Inc., and Cumulus Licensing LLC, licensees of all of the stations involved in this Amended Proposal. The Joint Parties are filing this Amended Proposal in response to the *Notice of Proposed Rule Making*, DA 05-74, released on January 28, 2005, in this proceeding. The Joint Parties propose a number of changes to the FM Table of Allotments which, taken together, will establish first local services in the communities of New Haven, Kentucky, and Millersville, Tennessee (with a combined population of 6,157). In order to provide these communities with first local services a number of other changes to the FM Table of Allotments are requested. However, all communities will retain local service, and all loss areas will remain well served.

Three of the Joint Parties (Elizabethtown, Marion, and Washington) previously filed a Petition for Rule Making that is the subject of the *NPRM* in this proceeding. The Joint Parties are amending that proposal due to subsequent negotiations that resulted in a proposal that will better serve the public interest by providing first local services to two communities. The Joint Parties recognize that under the *Taccoa, Georgia*, policy, an amended proposal submitted by the comment date will be treated as a new petition for rule making and that the FCC will issue a new notice of proposed rule making with a new docket number. The Joint Parties request that the Commission issue the notice of proposed rule making expeditiously and, in doing so, separate the Rodgers Broadcasting Corp. proposal, which would be retained in the instant docket (Docket No. MB 05-17).

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| Indiana, Erlanger and Lebanon, |) | |
| Kentucky, and Norwood, Ohio; |) | |
| Lebanon, Lebanon Junction, |) | |
| New Haven, and Springfield, Kentucky) |) | |

To: Office of the Secretary
Attn: Assistant Chief, Audio Division
Media Bureau

COMMENTS AND AMENDED PROPOSAL

Elizabethtown CBC, Inc. ("Elizabethtown"), licensee of Stations WKMO(FM), Hodgenville, Kentucky, and WTHX(FM), Lebanon Junction, Kentucky; CBC of Marion County, Inc. ("Marion"), licensee of Station WLSK(FM), Lebanon, Kentucky; Washington County CBC, Inc. ("Washington"), licensee of Station WAKY-FM, Springfield, Kentucky; Newberry Broadcasting, Inc. ("Newberry"), licensee of Station WHHT(FM), Horse Cave, Kentucky;¹ and Cumulus Licensing LLC ("Cumulus"), licensee of Stations WNFN(FM), Belle Meade, Tennessee, WWTN(FM), Manchester, Tennessee, WQQK(FM), Hendersonville, Tennessee, and WRQQ(FM), Goodlettsville, Tennessee (collectively, the "Joint Parties"), by their respective counsel, hereby submit comments and an amended proposal in the above-captioned proceeding.

¹ Each of these entities, Elizabethtown, Marion, Washington, and Newberry, have common ownership.

The amended proposal will provide first local services to the communities of New Haven, Kentucky and Millersville, Tennessee. The following amendments to the FM Table of Allotments are requested (listed alphabetically):

| Community | Channel | |
|----------------------------|------------|----------|
| | Existing | Proposed |
| Hodgenville, Kentucky | 292A | 297A |
| Horse Cave, Kentucky | 294A | 293A |
| Lebanon, Kentucky | 265C3 | -- |
| Lebanon Junction, Kentucky | 297A | 257A |
| New Haven, Kentucky | -- | 274A |
| Springfield, Kentucky | 274A | 265A |
| Belle Meade, Tennessee | 294A | 246C2 |
| Goodlettsville, Tennessee | 246C2 | 221A |
| Hendersonville, Tennessee | 221A | 259C |
| Manchester, Tennessee | 259C, 268A | 268A |
| Millersville, Tennessee | -- | 294C3 |

In support hereof, the Joint Parties state as follows:

I. PRELIMINARY MATTERS

(1) On March 26, 2004, Elizabethtown, Marion, and Washington filed a *Petition for Rule Making*, which proposed to (i) reallocate Channel 297A from Lebanon Junction to New Haven, Kentucky, and modify the license of Station WTHX(FM) to specify New Haven as its new community of license; (ii) reallocate Channel 274A from Springfield to Lebanon Junction, Kentucky, and modify the license of Station WAKY-FM to specify Lebanon Junction as its new community of license; and (iii) reallocate Channel 265C3 from Lebanon, Kentucky, to Springfield, Kentucky, on Channel 265A and modify the license of Station WLSK(FM) to specify Springfield as its new community of license. This proposal has been consolidated with the proposal of Rodgers Broadcasting Corporation ("Rodgers") by the Commission due to the appearance of Station WLSK(FM), Lebanon, Kentucky, in both proposals. Although, Marion, the licensee of WLSK(FM) has no objection to this treatment, it was willing to accept the

downgrade of its station from Channel 265C3 to Channel 265A as part of the Rodgers proposal, and to relocate the Station to Springfield, Kentucky, in the separate petition since both proposals are consistent with the Rodgers petition.

(2) Subsequent to the issuance of the *NPRM*, Cumulus requested that Newberry modify Station WHHT(FM), Horse Cave, Kentucky, to permit Station WNFN(FM), Belle Meade, Tennessee, to upgrade its facility from Channel 294A to Channel 294C3 and to change its community of license to Millersville, Tennessee. In order to modify Station WHHT(FM), Newberry determined that its “sister” stations which are involved in this proceeding (WLSK(FM), Lebanon; WAKY-FM, Springfield; and WTHX(FM), Lebanon Junction) needed to be modified as well. Hence, the Joint Parties are presenting an amended proposal for consolidation. They recognize that under *Taccoa, Georgia*,² an amended proposal submitted by the comment date will be treated as a new petition for rule making and the FCC will issue a new notice of proposed rule making with a new docket number. The Joint Parties urge the FCC to issue a new *NPRM* as soon as possible and to separate the Rodgers proposal in this proceeding. There is no reason to delay Rodgers’ proposal, which is not being amended. The Commission can downgrade Channel 265C3 to 265A at Lebanon, Kentucky as requested by Rodgers in this proceeding, and then move that channel to Springfield as requested in the new proceeding. The additional move to Springfield is consistent with the Rodgers proposal and does not affect any other pending proposal.³

² 16 FCC Red 21191 (2001)

³ In the alternative, the modification of Station WLSK(FM) from Lebanon to Springfield and the downgrade of WLSK(FM) from Channel 265C3 to Channel 265A can still be accomplished as part of the instant proceeding since it has already been proposed in the *NPRM* and an expression of interest is being resubmitted as part of the amended proposal.

(3) Each of the proposed changes to the FM Table of Allotments involve stations owned by the Joint Parties, which hereby state that they will apply for the respective channels and construct the facilities if their respective applications are granted. Other than the commonly owned entities (Newberry, Elizabethtown, Marion, and Washington) and Cumulus, there are no other parties in this proceeding. Thus, all requested modifications can be effectuated.

II. COMPLIANCE WITH THE COMMISSION'S TECHNICAL RULES

A. STATION WNFN(FM), BELLE MEADE TO MILLERSVILLE, TENNESSEE

1. Technical Studies

(4) As indicated in the attached channel study, Figure E1A, Channel 294C3 can be allotted to Millersville, Tennessee, in compliance with the Commission's spacing rules provided that a change is made at Horse Cave, Kentucky.⁴ This change, and the other modifications it requires in turn, will be discussed below. From the proposed site the station will provide a 70 dBu signal to Millersville. *See* Figure E1B.

2. Change in Community of License

(5) In *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License ("Community of License")*, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990), the Commission stated that in order to grant a change in community of license: (1) the proposed use of the channel must be mutually exclusive with its current use; (2) the existing community of license must retain local service; and (3) the proposed arrangement of allotments must be preferred over the existing arrangement under the Commission's allotment priorities.

⁴ The channel study shows a short spacing to Channel 293C3 at Oak Grove, Kentucky. That channel was deleted in Docket No. 93-314.

(6) Here, the attached channel study, Figure E1A, demonstrates that the proposed allotment of Channel 294C3 at Millersville is mutually exclusive with its current allotment at Belle Meade. Belle Meade will retain existing local service, because, as discussed below, Station WRQQ(FM) proposes to change its community of license from Goodlettsville to Belle Meade. The provision of a first local service at Millersville (2000 U.S. Census pop. 5,308) under priority (3) is preferred over the retention of a third local service at Manchester, Tennessee (2000 U.S. Census pop. 8,294) under priority (4).⁵ See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). The allotment of Channel 294C3 to Millersville will result in a net gain of 2,425 sq. kilometers (102%), and a net loss in 60 dBu service to 96,568 people. See Figure E1D. This population loss is more than overcome through the public interest benefits of this proposal as a whole. The loss area will continue to receive adequate aural service. See Figure E1E.

(7) Both Millersville and Belle Meade are located within the Nashville-Davidson, Tennessee Urbanized Area. Therefore, this relocation does not implicate the Commission's policy concerning the migration of stations from underserved rural areas to well-served urban areas. See *Boulder and Lafayette, Colorado*, 11 FCC Rcd 3632 (1996) (granting a proposal to reallocate a channel from one community in an Urbanized Area to another community in same Urbanized Area without a *Tuck* showing); *East Los Angeles, Long Beach and Frazier Park, California*, 10 FCC Rcd 2864 (1995) (stating that the concern with migration to Urbanized Areas does not exist when a proposal involves reallocating a channel from one community in an

⁵ As discussed below, WNFN's move to Millersville requires three other Cumulus stations to move in order to ensure that Belle Meade retains local service. Ultimately, Manchester, Tennessee will lose a local service. Therefore, the proper analysis here is to compare the community of Manchester, Tennessee, which is losing a station to the community of Millersville, Tennessee, which is obtaining a first local service.

Urbanized Area to another community in same Urbanized Area); *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988) (“*Tuck*”). Nevertheless, a *Tuck* showing is provided.

(8) Under *Tuck*, in making the determination whether to award an urbanized community a first local service preference, the Commission will consider (1) the extent to which the station will provide service to the entire Urbanized Area, (2) the relative populations and proximity of the suburban and central city, and, most importantly, (3) the independence of the suburban community. *Tuck*, 3 FCC Rcd at 5377-78. In this case, from the proposed transmitter site, WNFN(FM) would place a 70 dBu contour over 20% of the Nashville-Davidson Urbanized Area. Millersville’s population (2000 U.S. Census pop. 5,308) is less than one percent of that of Nashville-Davidson (2000 U.S. Census pop. 545,524), and Millersville is located approximately 24 kilometers from Nashville-Davidson. These figures are similar to those of other suburban communities granted a first local preference. See e.g., *Park City, Montana*, 19 FCC Rcd 2092 (2004) (Park City’s population is less than 1% of that of Billings, and Park City is located 21 miles from Billings); *Ada, Newcastle and Watonga, Oklahoma*, 11 FCC Rcd 16896, 16899 (1996) (Newcastle’s population is less than 1% of that of Oklahoma City, and Newcastle is located 15 miles from Oklahoma City). Nevertheless, the Commission has repeatedly stated that these factors are less important than evidence of independence. See *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995). The following analysis of the eight *Tuck* factors demonstrates the independence of Millersville from Nashville-Davidson.

1. Extent to which the residents of Millersville work in Millersville.

According to 2000 Census figures, 112 of the 2,600 employed individuals in Millersville, or 4.3%, work at their place of residence. See Exhibit 2. As shown below, there are many employers in Millersville who provide ample opportunities for Millersville

residents to be employed in Millersville and not in Nashville-Davidson. This alleviates any concerns that Millersville is dependent on Nashville-Davidson for the employment of its residents. *See Lebanon and Speedway, Indiana*, 17 FCC Rcd 25064, 25065 (2002).

2. ***Newspapers and other media that cover Millersville's local needs and interests.*** The *Robertson County Times* and *The News Examiner* are newspapers that cover a number of communities in Robertson and Sumner Counties, including the community of Millersville. Therefore, the residents of Millersville do not have to rely on the media in Nashville-Davidson. *See Exhibit 2.*

3. ***Community leaders and residents perceive Millersville as being separate from Nashville-Davidson.*** Millersville is located in Sumner and Robertson Counties in Tennessee. The residents of Millersville voted to incorporate and form a city in May of 1981. The Millersville government has aggressively pursued the growth of Millersville's population and the expansion of its infrastructure. Since its incorporation, the population of Millersville has increased from 1,214 to 5,308 people. Also, the government has issued two bonds and acquired grants to improve the infrastructure and to acquire and develop land. *See Exhibit 2.*

4. ***Millersville has its own local government and elected officials.*** Millersville is governed by a Mayor and City Commission. The City Commission enacts all ordinances and resolutions, adopts the budget, and sets policy. The Commission appoints the City Manager, the City Attorney and members of all Boards and Commissions. The City Commission consists of five members who are elected and serve four year terms. The Mayor and Vice-Mayor are elected from among its members. The Mayor is the presiding officer. The following volunteer committees are appointed by and

advise the City Commission: Planning Commission, Board of Zoning Appeals, Towing Authority, and Beer Board. The Millersville City Hall houses the City Manager's office, Commission Chamber, Finance Department, Planning and Code Enforcement Department, and the Fire and Police Departments. The Public Works and Parks Department provides a variety of services for the citizens of Millersville. The department is divided into three areas, Sewer, Streets, and Parks. *See Exhibit 2.*

5. ***Millersville has a zip code and phone directory.*** The zip code assigned to Millersville is 37072, which is shared with Goodlettsville. The phone listings for Millersville government offices can be found on the Millersville government website. *See Exhibit 2.*

6. ***Millersville has its own commercial establishments.*** Millersville is home to a number of retail and commercial businesses. A number of these local businesses identify with the community by using "Millersville" in their name, including Millersville Mobile Park and Millersville Paint & Body Shop. Other businesses located in Millersville include Farmers Bank, Mustang Corral, Consumers Gasoline Station, Dustin's Towing, Energetic Solutions, G T Motors, Lamberth and Sons Plumbing, and Red's Traveland Mart.⁶ Because Millersville is located in Sumner and Robertson counties, it is served by the Sumner Economic Council and the Springfield/Robertson Chamber of Commerce. Churches in Millersville include the Millersville Assembly of God and the Millersville Church of Christ. *See Exhibit 2.*

⁶ Because Millersville shares a zip code with Goodlettsville, many of the businesses listed in this section have a "Goodlettsville" mailing address. However, research of the location of these businesses indicate that they are located in Millersville.

7. *Millersville is a separate and distinct advertising market from Nashville-Davidson.* The *Robertson County Times* and *The News Examiner* provide the businesses of Millersville with a place to advertise to the residents of Millersville without relying on the Nashville-Davidson advertising market. See Exhibit 2.

8. *Millersville has its own schools, police department, and fire department.* Sumner and Robertson Counties administer the public schools in Millersville, which included Millersville Elementary. The Millersville Police Department under the direction of the Police Chief, protects the public safety with three divisions: Criminal Investigation, Operations, and Community Service Aides (Codes Enforcement). The Millersville Police Department has thirteen full-time certified officers. The Millersville Fire Department is headed by the Fire Chief and is manned by trained volunteers. The Department operates from two stations in Millersville: Fire Station One at City Hall and Fire Station Two on Bethel Road. See Exhibit 2.

(9) Cumulus reiterates that as the licensee of WNFN(FM), it will apply for Channel 294C3 to serve Millersville at a new transmitter site and construct the facility if a permit is granted.

B. STATION WHHT(FM), HORSE CAVE, KENTUCKY

(10) In order to allot Channel 294C3 to Millersville, Station WHHT(FM), Horse Cave, Kentucky, must change from Channel 294A to Channel 293A. Channel 293A can be allotted to Horse Cave at the station's current coordinates in compliance with the Commission's spacing rules provided that a change is made at Hodgenville, Kentucky. See Figure E2A. This change will be discussed below. From the current site the station will continue to provide a 70 dBu signal to Horse Cave. See Figure E2B. Station WHHT(FM) is licensed to Newberry, one of the

Joint Parties. Newberry hereby states that it will file an application for the substitute channel and construct the facility.

C. STATION WKMO(FM), HODGENVILLE, KENTUCKY

(11) In order to allot Channel 293A to Horse Cave, Station WKMO(FM), Hodgenville, Kentucky, must change from Channel 292A to Channel 297A. Channel 297A can be allotted to Hodgenville with a change in the station's current coordinates in compliance with the Commission's spacing rules provided that a change is made at Lebanon Junction, Kentucky.⁷ See Figure E3A. That change will be discussed below. From the proposed site the station will continue to provide a 70 dBu signal to Hodgenville. See Figure E3B. The allotment of Channel 297A to Hodgenville will result in a net loss in 60 dBu service to 3,229 people. See Figure E3D. This population loss is more than overcome through the public interest benefits of this proposal as a whole. Station WKMO(FM) is licensed to Elizabethtown, one of the Joint Parties. Elizabethtown hereby states that it will file an application for the change in transmitter site and channel and construct the facility.

D. STATION WTHX(FM), LEBANON JUNCTION, KENTUCKY

(12) In order to allot Channel 297A to Hodgenville, Station WTHX(FM), Lebanon Junction, Kentucky, must change from Channel 297A to Channel 257A. Channel 257A can be allotted to Lebanon Junction with a change in the station's current coordinates in compliance with the Commission's spacing rules. See Figure E4A. From the proposed site the station will continue to provide a 70 dBu signal to Lebanon Junction. See Figure E4B. The allotment of Channel 257A to Lebanon Junction will result in a net loss in 60 dBu service to 7,464 people.

⁷ In order to allot Channel 297A to Hodgenville, a change to the original proposal also must be made. Specifically, Channel 297A will no longer be allotted to New Haven. Instead, Channel 274A will be allotted to New Haven. This change is discussed below.

See Figure E4D. This population loss is more than overcome through the public interest benefits of this proposal as a whole. Station WTHX(FM) is licensed to Elizabethtown, one of the Joint Parties. Elizabethtown hereby states that it will file an application for the change in transmitter site and channel and construct the facility.

(13) As discussed above, the original proposal in this proceeding requested the reallocation Channel 297A from Lebanon Junction to New Haven, Kentucky. This reallocation is no longer necessary.

E. STATION WAKY-FM, SPRINGFIELD TO NEW HAVEN, KENTUCKY

1. Technical Studies

(14) The Joint Parties still desire to provide New Haven, Kentucky with a first local service. Therefore, the parties request that the Commission reallocate Channel 274A from Springfield to New Haven, Kentucky, and modify the license of Station WAKY-FM to specify New Haven as its new community of license. As indicated in the attached channel study, Figure E8A, Channel 274A can be allotted to New Haven in compliance with the Commission's spacing rules. From the proposed site the station will provide a 70 dBu signal to New Haven. See Figure E8B.

2. Change in Community of License

(15) The relocation of WAKY-FM from Springfield to New Haven complies with the Commission's policy in *Community of License, supra*. The attached channel study, Figure E8A, demonstrates that the proposed allocation of Channel 274A at New Haven is mutually exclusive with the current allocation of Channel 274A at Springfield. Springfield will retain existing local service, because, as originally proposed and as discussed below, Station WLSK(FM), Lebanon, Kentucky is changing its license to specify Springfield as its community of license. Also, as discussed in the original proposal, the provision of first local service at New Haven (2000 U.S.

Census pop. 849), under priority (3) is preferred over the retention of a second local service at Lebanon (2000 Census pop. 5,728) under priority (4). The allotment of Channel 274A to New Haven will result in a net gain in 60 dBu service to 47,602 people. *See* Figure E8D. The loss area will continue to receive adequate aural service. *See* Figure E8E.

(16) Finally, as discussed in the original proposal,⁸ New Haven is a community for allotment purposes. New Haven is not located in an urbanized area and the proposed contour of Station WAKY-FM will not cover any percentage of an urbanized area. New Haven is an incorporated place with a population of 849 persons. New Haven is home to a number of businesses and organizations, including the Kentucky Railway Museum, Rolling Fork Christian Church, St. Catherine Elementary School, Sherwood Inn, Rolling Fork Iron Horse Festival, and Fox Hollow Pottery. The zip code assigned to New Haven is 40051 and the U.S. Postal Service operates an office in New Haven.

(17) Washington reiterates that as the licensee of WAKY-FM, it will apply for Channel 274A to serve New Haven at a new transmitter site and construct the facility if a permit is granted.

F. STATION WLSK(FM), LEBANON TO SPRINGFIELD, KENTUCKY

(18) As originally proposed, in order to avoid depriving Springfield, of its only local service, Station WLSK(FM), Lebanon, Kentucky proposes to change its community to Springfield, Kentucky. In order to facilitate this change, the channel of Station WLSK(FM) must be changed from Channel 265C3 to Channel 265A.⁹ As indicated in the attached channel

⁸ The Joint Parties request that the Commission incorporate the original petition as part of the new docketed proceeding.

⁹ As there are no changes to this proposal as it was originally proposed, the Joint Parties hereby incorporate by reference the original proposal for the discussion of the technical and community of license analyses.

study, Figure E9A, Channel 265A can be allotted to Springfield in compliance with the Commission's spacing rules. From the proposed site the station will provide a 70 dBu signal to Springfield. *See* Figure E9B.

(19) The relocation of WLSK(FM) from Lebanon to Springfield complies with the Commission's policy in *Community of License, supra*. The attached channel study, Figure E9A, demonstrates that the proposed allotment of Channel 265A at Springfield is mutually exclusive with the current allotment of Channel 265C3 at Lebanon. Lebanon will retain existing local service from Station WLBN(AM). Also, as discussed in the original proposal, the provision of a first local service at New Haven (2000 U.S. Census pop. 849), under priority (3) is preferred over the retention of a second local service at Lebanon (2000 Census pop. 5,728) under priority (4). The allotment of Channel 265A to Springfield will result in a net loss of 2,300 sq. kilometers, a net loss in 60 dBu service to 57,202 people. *See* Figure E9D. This population loss is more than overcome through the public interest benefits of this proposal as a whole. The loss area will continue to receive adequate aural service. *See* Figure E9E.

G. STATION WRQQ(FM), GOODLETTSVILLE TO BELLE MEADE, TENNESSEE

(20) In order to avoid depriving Belle Meade, of its only local service, Station WRQQ(FM), Goodlettsville, Tennessee proposes to change its community to Belle Meade, Tennessee.

(21) As indicated in the attached channel study, Figure E5A, Channel 246C2 can be allotted to Belle Meade at the station's current site in compliance with the Commission's spacing rules. From the current site the station will provide a 70 dBu signal to Belle Meade. *See* Figure E5B. Since there is no change in site, there will be no gain or loss area.

(22) The relocation of WRQQ(FM) from Goodlettsville to Belle Meade complies with the Commission's policy in *Community of License, supra*. The attached channel study, Figure

E5A, demonstrates that the proposed allotment of Channel 246C2 at Belle Meade is mutually exclusive with the current allotment of Channel 246C2 at Goodlettsville. Goodlettsville will retain existing local service, because as discussed below, Station WQQK(FM), Hendersonville, Tennessee, proposes to change its community of license to Goodlettsville. The provision of a first local service at Millersville (2000 U.S. Census pop. 5,308) under priority (3) is preferred over the retention of a third local service at Manchester, Tennessee (2000 U.S. Census pop. 8,294) under priority (4).¹⁰ Both Goodlettsville and Belle Meade are located in the Nashville-Davidson Urbanized Area and Cumulus is not seeking a first local service preference at Belle Meade. Thus, no *Tuck* showing is required.

(23) Cumulus reiterates that as the licensee of WRQQ(FM), it will apply for Channel 246C2 to serve Belle Meade and construct the facility if a permit is granted.

H. STATION WQQK(FM), HENDERSONVILLE TO GOODLETTSVILLE, TENNESSEE

(24) In order to avoid depriving Goodlettsville, of its only local service, Station WQQK(FM), Hendersonville, Tennessee proposes to change its community to Goodlettsville, Tennessee.

(25) As indicated in the attached channel study, Figure E6A, Channel 221A can be allotted to Goodlettsville at the station's current site in compliance with the Commission's spacing rules. From the current site the station will provide a 70 dBu signal to Goodlettsville. See Figure E6B. Since there is no change in site, there will be no gain or loss area.

(26) The relocation of WQQK(FM) from Hendersonville to Goodlettsville complies with the Commission's policy in *Community of License, supra*. The attached channel study,

¹⁰ As discussed above, the proper analysis here is to compare the community of Manchester, Tennessee, which is losing a station to the community of Millersville, Tennessee, which is obtaining a first local service.

Figure E6A, demonstrates that the proposed allotment of Channel 221A at Goodlettsville is mutually exclusive with the current allotment of Channel 221A at Hendersonville. Hendersonville will retain existing local service, because as discussed below, Station WWTN(FM), Manchester, Tennessee, proposes to change its community of license to Hendersonville. The provision of a first local service at Millersville (2000 U.S. Census pop. 5,308) under priority (3) is preferred over the retention of a third local service at Manchester, Tennessee (2000 U.S. Census pop. 8,294) under priority (4). Both Goodlettsville and Hendersonville are located in the Nashville-Davidson Urbanized Area and Cumulus is not seeking a first local service preference at Goodlettsville. Thus, no *Tuck* showing is required.

(27) Cumulus reiterates that as the licensee of WQQK(FM), it will apply for Channel 221A to serve Goodlettsville and construct the facility if a permit is granted.

I. STATION WWTN(FM), MANCHESTER TO HENDERSONVILLE, TENNESSEE

(28) In order to avoid depriving Hendersonville, of its only local service, Station WWTN(FM), Manchester, Tennessee proposes to change its community to Hendersonville, Tennessee.

(29) As indicated in the attached channel study, Figure E7A, Channel 259C can be allotted to Hendersonville at the station's current site in compliance with the Commission's spacing rules.¹¹ From the current site the station will provide a 70 dBu signal to Hendersonville. See Figure E7B. Since there is no change in site, there will be no gain or loss area.

¹¹ The engineering statement reveals that at its current location, WWTN(FM) is short-spaced to WRLT(FM) (Channel 261A), Franklin, Tennessee. This short spacing is governed by Section 73.213 of the Commission's Rules. The Commission has held that a station with short spacing under Section 73.213 may change its community of license so long as (i) no additional short-spacing is created, (ii) no existing short-spacing is exacerbated, and (iii) the potential for interference between currently short spaced stations is not increased. See *Kankakee and Park Forest, Illinois*, 16 FCC Rcd 6768, 6768 (2001); *Killeen and Cedar Park, Texas*, 15 FCC Rcd 1945, 1945-46 (2000); *Oceanside and Encinitas, California*, 14 FCC Rcd 15302, 15304 (1999); *Fremont and Holton, Michigan*, 14 FCC

(30) The relocation of WWTN(FM) from Manchester to Hendersonville complies with the Commission's policy in *Community of License, supra*. The attached channel study, Figure E7A, demonstrates that the proposed allotment of Channel 259C at Hendersonville is mutually exclusive with the current allotment of Channel 259C at Manchester. Manchester will retain existing local service from Stations WFTZ(FM) and WMSR(FM). The provision of a first local service at Millersville (2000 U.S. Census pop. 5,308) under priority (3) is preferred over the retention of a third local service at Manchester, Tennessee (2000 U.S. Census pop. 8,294) under priority (4). Cumulus is not seeking a first local service preference at Hendersonville. Thus, no *Tuck* showing is required.

(31) Cumulus reiterates that as the licensee of WWTN(FM), it will apply for Channel 259C to serve Hendersonville and construct the facility if a permit is granted.

III. CONCLUSION

(32) Grant of this amended proposal is in the public interest because it will provide new first local services at Millersville, Tennessee, and New Haven, Kentucky. All communities will retain local service, and all loss areas will remain well served. The Joint Parties are confident that the changes can be implemented smoothly with a minimum of disruption. Accordingly, the Commission should release a notice of proposed rule making in a new docket as soon as possible.

Rcd 17108, ¶ 5 (1999) *Newnan and Peachtree City, Georgia*, 7 FCC Rcd 6307, 6308 (1992). These conditions are met here since this proposal requires no change to WWTN's facilities.

Respectfully Submitted,

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TECHNICAL REPORT

This **Technical Report** has been developed in support of an amendment to a proposed rulemaking (MB Docket No. 05-17, RM-11114).

The Original Proposal:

Washington County CBC, Inc. (licensee of WAKY-FM, Springfield, KY), Elizabethtown CBC, Inc. (licensee of WTHX, Lebanon Junction, KY) and CBC of Marion County, Inc. (licensee of WLSK, Lebanon, KY) proposed a series of reallocations which would have resulted in WTHX, Lebanon Junction on channel 297A providing a first local service to New Haven, KY (population = 849). The Commission staff was kind enough to consolidate those proposals and the proposals in RM-11113 into a single proceeding – MB Docket No. 05-17. The RM-11114 proposal requested three changes:

297A - WTHX from Lebanon Junction, KY to New Haven, KY as a first local service;
274A - WAKY-FM from Springfield, KY to Lebanon Junction, KY; and,
265A - WLSK from Lebanon, KY to Springfield, KY as a replacement.

The Proposed Amendment:

Some time after filing the changes requested in RM-11114, Commonwealth Broadcasting, Inc. (Commonwealth - owner of all three CBC entities) was approached by Cumulus Licensing LLC (Cumulus) seeking changes in three Commonwealth stations to effect an upgrade for station WNFN on channel 294A at Belle Meade, TN to 294C3 at Millersville, TN (2000 population = 5,308) as a first local service. The changes required for the WNFN upgrade and change in city of license were incongruent with the allocation scenario Commonwealth had advanced in RM-11114. Specifically, channel 297A is the

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only available channel that can be substituted for 292A at Hodgenville thus permitting the 293A for 294A substitution for WHHT, Horse Cave that is required for the WNFN upgrade. Therefore, if WTHX's 297A were to be reassigned to New Haven as originally requested, the Cumulus WNFN upgrade could not be implemented. Unfortunately, the Cumulus and Commonwealth negotiations have only recently resulted in an agreement, and could not be filed prior to the release of MB Docket No. 05-17.

This amendment to RM-11114 will accommodate the WNFN upgrade and change, and provide a first local service to Millersville, TN and New Haven, KY by virtue of the change in city of license of WAKY-FM from Springfield, KY to New Haven, KY. The original proposal requested a change in city of license for WTHX from Lebanon Junction to New Haven. The instant amendment retains WTHX at Lebanon Junction with a channel and site move as one aspect of the changes required for the WNFN upgrade. The WNFN upgrade requires a chain of three modifications beginning with (1) WHHT, Horse Cave from 294A to 293A that then requires (2) a substitution of 297A for 292A at WKMO, Hodgenville and finally (3) a substitution of 257A for WTHX's 297A, Lebanon Junction.

This amendment does not impact the Rodgers proposals in RM-11113. The declassification of WLSK from 265C3 to 265A and reallocation to Springfield remains the same as originally proposed in RM-11114 and contained in MB Docket No. 05-17, and is entirely compatible with the Rodgers proposals in RM-11113. In fact, it would seem possible for the Commission to proceed with the Rodgers proposal. The WLSK facility proposed herein is technically identical to the WLSK 265A change in city of

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license to Springfield requested by Commonwealth originally. The requested amendments are summarized below:

IA. Summary of allocations changes required for WNFN 294C3, Millersville:

| <u>Community</u> | <u>Existing</u> | <u>Proposed</u> | <u>Coordinates</u> |
|-------------------------|------------------------|------------------------|--|
| Millersville, TN | ----- | 294C3 (WNFN) | N36-26-24 W86-37-39 |
| Horse Cave, KY | 294A | 293A (WHHT) | N37-13-57 W85-52-06 (WHHT Licensed site) |
| Hodgenville, KY | 292A | 297A (WKMO) | N37-40-34 W85-40-57 |
| Lebanon Junction, KY | 297A | 257A (WTHX) | N37-44-37 W85-38-52 |
| Belle Meade, TN | 294A | 246C2 (WRQQ) | N36-17-50 W 86-45-11 (WRQQ licensed site) |
| Goodlettsville, TN | 246C2 | 221A (WQQK) | N36-17-50 W86-45-11 (WQQK licensed site) |
| Hendersonville, TN | 221A | 259C | N35-49-03 W86-31-24 (WWTN licensed site) |
| Manchester, TN | 259C, 268A | 268A (WFTZ) | |

IB. Summary of changes required for WAKY-FM New Haven, KY :

| <u>Community</u> | <u>Existing</u> | <u>Proposed</u> | <u>Coordinates</u> |
|-------------------------|------------------------|------------------------|---------------------------|
| New Haven, KY | ----- | 274A (WAKY) | N37-46-07 W85-35-57 |
| Springfield, KY | 274A | 265A (WLSK) | N37-38-50 W85-11-50 |
| Lebanon, KY | 265C3 | ----- | |

All of the proposed changes in city of license are entirely mutually exclusive with the licensed facilities as demonstrated in Exhibits E1-9A.

II. Population and area analyses:

The WNFN Population and Area:

The proposed change in city of license and upgrade for station WNFN provides a

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first local service to Millersville, TN (2000 population = 5,308), and will result in a total area served of 4,803 square kilometers with a population of 627,724. There will be a loss area of 1,310 square kilometers containing a population of 316,662. The net of new service less existing and loss services is a gain of 2,425 square kilometers (+102%) and a net loss of 96,568 in population.

The gain and loss areas are plotted on Exhibit E1D. Exhibit E1E demonstrates that the loss area receives in excess of eleven (11) fulltime aural services without counting class A or noncommercial FM stations or WSM(AM) or other AM fulltime services. Licensed 60 dBu contours were used for Class C stations and the uniform maximum class contours for C2, C1 and C0 stations.

It is also noted that the WNFN 294C3 proposal's 70 dBu will encompass less than 50% of the Nashville-Davidson Urbanized Area as defined in the 2000 U.S. Census. A plot provided as Exhibit E1F shows a total of 20.35% of the Urbanized Area is covered by the WNFN 70dBu.

WAKY-FM Population and area:

The change in city of license for WAKY-FM to New Haven (2000 population = 849) will provide service to a total population of 103,044. This represents a gain of 71,359 in population and 1,416 sq km in area. The loss area contains a population of 23,757 and an equal area of 1,416 sq km, and a net population gain of 47,602 (+76%).

The loss and gain areas are plotted in E8D, and an existing signal study is provided as E8E demonstrating that the loss area will continue to receive at least five (5) fulltime aural services.

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WLSK Population and area:

The downgrade of WLSK to 265A and reallocation to Springfield will result in a loss of 57,398 in population and 2,320 sq km in area and a gain of 196 in population and 20 sq km in area. This yields a net population loss of 57,202 and a net area loss of 2,320 sq km.

The gain and loss areas are plotted in Exhibit E9D, and the remaining fulltime aural services in the loss area are plotted in Exhibit E9E. The loss area continues to receive at least five (5) fulltime aural services.

Summary of Gain and Loss Areas and Populations:

A summary of the gain and loss areas for all allocation changes including site moves is provided below. Plots of all of the gain and loss areas are provided as Exhibits E1D through E9D.

| <u>Station-Allocation</u> | <u>Pop. Gain</u> | <u>Loss</u> | <u>Net</u> | <u>Area Gain</u> | <u>Loss</u> | <u>Net</u> |
|---------------------------|------------------|-------------|------------|------------------|-------------|------------|
| (1) WNFN | 220,094 | 316,662 | -96,568 | 3,735 | 1,310 | +2,425 |
| (2) WKMO | 16,276 | 19,505 | -3,229 | 296 | 296 | 0 |
| (3) WTHX | 35,272 | 42,736 | -7,464 | 881 | 881 | 0 |
| (4) WAKY-FM | 71,359 | 23,757 | 47,602 | 1,416 | 1,416 | 0 |
| (5) WLSK | 196 | 57,398 | -57,202 | 20 | 2,320 | -2,300 |
| | 343,197 | 460,058 | -116,861 | 6,348 | 6,223 | 125 |

The sum of the allocation changes results in a 60 dBu population loss of 116,861 and a gain in area served of 125 square kilometers. Stations WRQQ, WQQK, WWTN and WHHT remain at their licensed sites and do not impact the gains and losses.